

## APPENDIX C

### **BRP'S STANDARD TERMS & CONDITIONS**

1. **OFFER/AGREEMENT.** These terms and conditions are made part of the attached purchase order, release or supply agreement ("Offer") issued by Bombardier Recreational Products Inc. (hereinafter "BRP") to the supplier identified in the Offer ("Supplier"), to purchase certain goods, tooling and/or services described in the Offer ("Products"). The Offer is binding on the parties when Supplier (1) returns written acceptance, (2) makes any shipment of Products to BRP, or (3) accepts the Offer in any other manner. In the case of a purchase order or release, Supplier shall be deemed to accept the Offer unless it notifies BRP otherwise within three (3) business days of receipt. Supplier shall notify BRP immediately if it is unable to fulfill any terms of the Offer. Quantities and delivery dates in a blanket purchase order ("BPO") are for forecasting purposes only and are not binding on the parties. From time to time, BRP may issue releases under a BPO that commit the parties to specific quantities and delivery dates. Unless otherwise governed by a supply agreement, the terms of the accepted Offer shall constitute the entire agreement between the parties ("Agreement"). In the event of a conflict between any of the terms on the face of an Offer and those contained on the reverse, the terms on the front shall control. Any additional terms in any proposal, quotation, invoice, acknowledgement or other communication from Supplier are hereby objected to and rejected and are not binding on BRP.
2. **PRICE.** The total price of the Products shall be as stated in the Agreement and unless otherwise specified therein, the price for Products shall be firm fixed. No additional charges or assessments of any kind (including, without limitation, freight/shipping charges, surcharges or taxes) will be allowed unless such charges are clearly specified in the Agreement. Supplier represents that the prices, discounts, and allowances extended to BRP on Products are no less favorable than those currently extended to any other customer of Supplier for the same or similar articles in equal or lower quantities.
3. **PACKING; SHIPPING.** Unless otherwise specified in the Agreement, shipments are FCA origin (ICC Incoterms 2010) and prices shall include all charges for packaging that conforms to the electronic version of BRP Logistics Handbook available at the time of shipment at <https://sites.google.com/a/brp.com/brp-logistics-handbook/>. Supplier shall describe, mark, and pack Products in a manner appropriate to ensure the Products' protection until delivered to BRP. Each box or crate shall be marked with BRP's purchase order number, shipping address, Supplier's name, BRP's part number, Product description, quantity and country of origin. A copy of the packing list/invoice must be affixed to the outside of each pallet and enclosed in one identified box per pallet. A bill of lading shall be sent to BRP on the day of shipment. Supplier shall comply with BRP's routing instructions, if any. If Supplier fails to follow BRP's routing instructions, Supplier shall compensate BRP for any resulting increase in transport costs.
4. **DELIVERY.** TIME IS OF THE ESSENCE as to Supplier's supply of Products and Supplier shall be responsible for any related damages, including but not limited to any costs of non-delivery, delay, cover, shortage, overage or line stoppage. All Products shall be delivered in the quantities, to the location(s) and on the date(s) set forth in the Agreement within the specified lead times. Products received in advance may be held or returned at Supplier's risk and expense. If Product is held, BRP's obligations shall run from the scheduled delivery dates. Supplier shall immediately notify BRP of any anticipated failure to deliver Products in a timely manner, which such notice shall in no way alleviate Supplier's obligations under the Agreement. Upon receipt of such notice, BRP may, at its sole option, cancel or reschedule such orders as may be affected by such notice,
5. **QUALITY.** Supplier, at its expense, shall supply Products in accordance with good manufacturing practice and in compliance with the Agreement and BRP's specifications and quality assurance requirements, including but not limited to the latest version available of the BRP Supplier Quality Manual. Products are subject to inspection and acceptance at BRP's location notwithstanding any prior payment. Non-conforming Products may be held or returned at Supplier's risk and expense. Supplier specifically agrees to pay BRP all costs related to rejection of Products. Supplier shall not repair or replace non-conforming Products unless BRP so directs. BRP may, from time to time, inspect and audit the operations of Supplier, its subcontractors or vendors, upon prior reasonable notice. Upon notice to Supplier, BRP may also maintain personnel at any Product production site to monitor quality, which Supplier hereby agrees to facilitate. BRP agrees to abide by any reasonable safety or confidentiality requirements with respect to such site.
6. **BILLING.** Supplier shall issue invoices, bills of lading and packing lists in accordance with BRP's requirements. Such documents shall include Supplier's packing list number, BRP's order number, part number, item number, English description, invoice quantity and unit of measure. Supplier's invoices shall also include Country of Origin, unit price and total invoice amount, with any tax and permitted surcharges itemized. Time periods for payment and discounts shall begin upon receipt of both conforming Product and complete and accurate invoices and all supporting documentation.
7. **TAXES/CUSTOMS.** Prior to delivery, Supplier shall be solely liable for any taxes, duties, customs or assessments in connection with the sale, purchase, transport, use or possession of Products, exclusive of sales tax. If Supplier improperly exports or imports Products, Supplier shall be responsible for all penalties, fines, assessments or costs BRP incurs. Supplier shall provide all certificates, specific forms or additional information requested by BRP, such as but not limited to K32A – Certificate of Importation, Sale or Transfer (Canadian Supplier only), Free Trade Agreement certificates, Origin Confirmation Declaration, or any other trade document. All goods must clearly be marked accordingly. Applicable marking rules must be respected. Country of origin (MADE IN or ASSEMBLED IN), as appropriate, must be shown on all Products.
8. **WARRANTY.** Supplier warrants that Products are: (a) new and unused; (b) merchantable and free from defects in materials and workmanship for the consumer warranty period applicable to the BRP product containing the Product; (c) free from defects in design (unless specifically designed by BRP); (d) free and clear of all liens and encumbrances, marketable title being in Supplier; (e) in strict conformance to the specifications, drawings, and descriptions in the Agreement and any approved samples; (f) fit and sufficient for their intended purpose to the extent Supplier knows or has means to know of such purpose; (g) in compliance with the standards in Supplier's industry and with all applicable laws, rules or regulations; and (h) in the case of services, performed in a professional and workmanlike manner. The foregoing warranties shall survive delivery, acceptance, inspection, testing, payment and use of Products and shall run in favour of BRP, its customers and any subsequent owners or users of the Products. No disclaimer of warranty, limitation of warranty or liability or exclusion of damages for breach of warranty appearing in any invoice or other form used by Supplier shall have any effect on the warranties contained in this Agreement.
9. **REMEDIES.** All remedies herein are cumulative and in addition to all rights and remedies provided by law or equity. Without limiting the foregoing, BRP may require Supplier to refund the purchase price for, repair or replace at BRP's option and at Supplier's expense, any Product (or re-perform any service) that fails to comply with the Agreement, regardless of such Product's location.
10. **DEFECTS.** Supplier shall immediately notify BRP of any actual or suspected defect in a Product, or other matter that may affect the safe or proper operation of a Product or its use in a BRP product. Supplier shall promptly provide all relevant information to BRP and cooperate fully with the investigation and any rework, field retrofit or recall. Supplier shall be responsible for all costs incurred by BRP due to any Product defect, recall, retrofit or other related action based on Supplier's acts or omissions.
11. **SPARE PRODUCTS.** Supplier shall maintain a supply of Products and the capability to effectively service Products for at least ten (10) years from the date of last shipment for production. Thereafter, Supplier shall give BRP six (6) months advance written notice of Supplier's election to stop supplying Products to allow BRP to order such quantity as it may reasonably require.

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12. **TOOLING.** Any and all machinery, dies, molds, jigs, fixtures, tooling, material, samples, prototypes, and any other property used to manufacture Products, which is owned, furnished, charged to, or paid for by or on behalf of BRP in whole or in part ("Tooling") shall be and remain the exclusive property of BRP. Title to Tooling shall pass to BRP without regard to BRP's payment or performance of other obligations. Supplier and its suppliers shall not retain any lien, encumbrance or interest, nor attempt to encumber BRP's interest in the Tooling. Tooling shall be: (a) used exclusively to fill BRP orders; (b) maintained in good condition at Supplier's expense; (c) subject to periodic accounting by Supplier at BRP's request and inspection by BRP; (d) identified as to location and not be moved without BRP's prior written approval; (e) not scrapped or destroyed without BRP's prior written approval; and (f) promptly returned (including any components or spare parts) in the same or better condition, reasonable wear and tear excepted, at any time upon BRP's request. Supplier agrees to assist in protecting and perfecting BRP's interest in the Tooling. Supplier waives any lien, right of set-off or counterclaim that might permit Supplier to refuse to deliver Tooling to BRP. All Tooling shall be conspicuously marked "Property of BRP" by Supplier, insured by Supplier and held at Supplier's risk while in Supplier's or its agent's control or possession.
13. **PRODUCT-RELATED TECHNOLOGY.** All technology, software, data, drawings, specifications, and other proprietary information or materials concerning the Product, including copies and duplicates, ("Technology") provided by BRP to Supplier shall remain the property of BRP. Any Technology created (1) at the request of BRP, (2) in connection with Products sold only to BRP, or (3) based in whole or in part on information provided by BRP, shall be considered as ordered or commissioned by BRP as a contribution to a collective work, and be considered "work made-for-hire" and shall belong to BRP. To the extent such Technology may not be deemed "work made-for-hire," Supplier and its employees, subcontractors and agents hereby assign, and BRP accepts, on a paid-up basis, all right, title and interest in and to all such Technology. Supplier shall not seek any registration, patent, copyright or titling of said Technology in its name or for its benefit. Supplier shall promptly execute and deliver such documents and take such action as BRP may reasonably request to protect or perfect BRP's right, title and interest in the Technology. Supplier shall not supply to anyone other than BRP any Products designed in whole or in part by or exclusively for BRP.
14. **TRADEMARKS.** Supplier shall not use any trademark, trade name or service mark of BRP or its affiliates and shall not contest the validity of BRP's right to any trademarks, trade names or service marks used by BRP as its own.
15. **INFRINGEMENT.** Except to the extent manufactured to BRP's specifications, Supplier warrants that the sale and use of Products will not infringe, directly or indirectly, any patent, trademark, trade name, trade secret, copyright or any proprietary right of another. If any Product or the use thereof is held to infringe any proprietary right and its use enjoined, Supplier shall, at its expense, procure for BRP and its customers the right to continue using said Product or replace said Product with a substantially equal, but non-infringing product acceptable to BRP. If further use of the Product is not possible, Supplier shall accept return of any unsold Product and refund to BRP all Product costs, including but not limited to the purchase price and transportation costs.
16. **INDEMNIFICATION.** Supplier shall indemnify, defend (with counsel satisfactory to BRP) and hold BRP, its parents, affiliates, subsidiaries, and their respective officers, directors, employees, successors, assigns, insurers, customers and agents ("Indemnified Persons"), harmless against any and all claims, demands, actions, causes of action, liability, losses, damages, costs, expenses and reasonable attorneys' fees, which an Indemnified Person may incur in any way related to a Product, Tooling, or Supplier's performance or negligent acts or omissions, including without limitation claims for personal injury, breach of warranty, infringement, strict liability, property damage, defect, or based on warning, instructions or government action. Supplier agrees that its obligations herein shall survive the termination or expiration of the Agreement. The indemnification contained in this Section shall not pertain to design defects, to the extent the Products were manufactured by Supplier to BRP's design.
17. **INSURANCE.** Supplier shall maintain occurrence-based commercial general liability insurance, including but not limited to products liability coverage, which (i) names the Indemnified Persons (as defined above) as additional insured; (ii) is issued by insurers rated A- or better by A.M. Best; (iii) provides coverage for bodily injury and property damage liability with "each occurrence" limits of an amount not less than U.S. three million dollars (USD \$3,000,000); and (iv) is maintained during the term hereof and for ten (10) years thereafter. Upon request and at least annually during the term of the Agreement, Supplier shall furnish BRP with certificates of insurance evidencing such coverage. Supplier shall require its insurer(s) to provide notice in writing to BRP at least sixty (60) days before any reduction in coverage, cancellation or non-renewal. If Supplier fails to maintain the insurance required herein, BRP may, but is not obligated to, purchase such insurance on Supplier's behalf and charge back the cost of same to Supplier.
18. **COMPLIANCE WITH LAWS / SUPPLIER CODE OF CONDUCT.** Supplier and its subcontractors, at its expense, shall comply with all laws, regulations and requirements applicable to the Product, the supply of Products to BRP or Supplier's performance hereunder. Supplier and its subcontractors shall comply with all wage, workers compensation, equal opportunity and reporting obligations and with all rules and regulations related to customs requirements. Supplier shall provide fully-completed Products related certificates such as but not limited to REACH, asbestos-free declarations and other applicable certificates and comply with all related requirements. Supplier and its subcontractors shall abide and act in compliance with the latest version of the BRP Supplier Code of Conduct available at <http://campaign.intertrade.com/brp/>.
19. **CONFIDENTIALITY.** Supplier may have access to certain proprietary or confidential information of BRP or its customers. Supplier agrees to hold such information in confidence and to use said information only for its performance under the Agreement and not for any other purpose or disclosure to any third party. The parties shall comply with any existing confidentiality agreement between them, which is incorporated herein and shall remain in full force and effect. Supplier shall not make any public acknowledgement or disclosure concerning the Agreement or its supply of Products to BRP.
20. **CANCELLATION.** BRP may cancel any order at any time for cause and without cost or penalty in the event: (a) any Products are defective; (b) Supplier fails to comply with any terms of the Agreement; (c) Supplier becomes insolvent, is subject to a bankruptcy proceeding or makes an assignment for the benefit of creditors; or (d) Supplier ceases or suspends its normal business operations. BRP may cancel any order at any time without cause and if such cancelled Products were stock merchandise, BRP's sole liability shall be to pay for Products shipped pursuant to the Agreement prior to cancellation. If such cancelled Products were manufactured to BRP's specifications, then, upon notice, Supplier shall cease all performance related to such Products (unless otherwise directed by BRP) and BRP shall pay Supplier its actual costs for work and materials incurred in accordance with the Agreement, consistent with applicable lead times. If the cancellation is made in advance of the Total Lead Time (the total number of calendar weeks corresponding to the sum of the Material Lead Time and the Manufacturing Lead Time), the cancellation shall be without cost to BRP. If the cancellation is made within the Material Lead Time (the maximum number of weeks Supplier needs to purchase raw materials for the manufacturing of the Products) but outside of the Manufacturing Lead Time (the maximum number of weeks Supplier needs to manufacture, test and deliver Products in quantities requested by BRP), then BRP will be responsible for the cost of the raw material that was ordered in conformity with the Material Lead Time as of the date Supplier was notified of such cancellation, but only to the extent that the order for raw material could not have been reasonably cancelled, changed or otherwise consumed and that such raw material conforms to the quality requirements of the Agreement. If the cancellation is made within the Manufacturing Lead Time, then BRP will compensate Supplier for any finished Products and work-in-process that were finished or in process in conformity with the Manufacturing Lead Time on the date Supplier was notified of the cancellation, and provided such Products and work-in-process conform to the quality requirements of the Agreement and the specifications. Upon such payment, title to any work, materials and Products shall pass to BRP.
21. **FORCE MAJEURE.** Neither party will be held responsible for a breach, delay or failure of performance of any obligation hereunder that results from war, act of God or natural disaster (e.g. fire, earthquake or flood), or governmental action not due to the fault of the party (e.g. embargo).
22. **WAIVER AND AMENDMENT.** Failure to require strict performance of any provision of the Agreement shall not constitute a waiver or default by a party or



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diminish that party's right to subsequently demand strict compliance therewith. No modification of the Agreement shall be enforceable unless in writing and signed by an authorized representative of BRP.

23. **ASSIGNMENT.** Except as otherwise provided between the parties, Supplier shall not assign or subcontract any of its rights, duties or obligations hereunder without BRP's prior written consent. Such consent shall not relieve Supplier of its obligations under the Agreement.
24. **HEADINGS; GOVERNING LAW.** The headings herein are for convenience only and shall not affect interpretation. The Agreement shall be governed by and construed in accordance with the internal laws of the Province of Quebec (without regard to conflict of law provisions thereof). The U.N. Convention on Contracts for the International Sale of Goods shall not apply to the Agreement. BRP reserves the right to impose additional terms on Products purchased or used beyond the boundaries of the United States of America.
25. **ENGLISH LANGUAGE.** The parties hereto have agreed that this Agreement and all other documents referred to herein be drafted in English. "Les parties ont consenti à ce que cette entente et tous les autres documents s'y référant soient exécutés en anglais."

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